

Assembly Bill No. 1897

CHAPTER 956

An act to amend Section 530.5 of, and to add Section 530.6 to, the Penal Code, relating to identity theft.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, Davis. Identity theft: remedies.

Existing law provides that every person who willfully obtains personal identifying information about another person without that person's consent, and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, or medical information in the name of that person, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, a fine not to exceed \$10,000, or both. Existing law also provides when a person is convicted of using that information to commit a separate crime, that court record shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime. Existing law also provides that if a consumer submits to a credit reporting agency a copy of a valid police report pursuant to these provisions, the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of that violation so that the information cannot be reported. Existing regulations of the Department of Motor Vehicles also provide that a person may apply for a new driver's license or identification card number in the event of fraudulent use by another, upon submission of a police report and specified supporting information.

This bill would provide that a person who has learned or reasonably suspects that his or her personal identifying information has been used by another to commit a crime, may initiate a law enforcement investigation by contacting the local law enforcement agency with jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and either begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the crime or suspected crime was committed for an investigation of the facts. This bill would also provide that a person who reasonably believes that he or she is the victim of identity theft may petition a court for an expedited judicial determination of his or her factual innocence order certifying

that he or she is a victim of identity theft, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity has been mistakenly associated with a record of criminal conviction. The bill would specify the sort of information to be used in making this determination, would direct the court to issue an order certifying that the petitioner is factually innocent where it finds that the petition is meritorious and there is no reason to believe the petitioner committed the offense. The bill would direct the Judicial Council to develop a form for use in connection with these proceedings, and would authorize courts to vacate determinations of factual innocence if a petition or supporting information is found to contain any material misrepresentation or fraud.

The bill would impose a state-mandated local program by requiring a higher level of service from local law enforcement.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person without the authorization of that person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

(b) "Personal identifying information," as used in this section, means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.



(c) In any case in which a person willfully obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

SEC. 2. Section 530.6 is added to the Penal Code, to read:

530.6. (a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime was committed for an investigation of the facts.

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense. If the petitioner is found factually innocent, the court shall issue an order certifying this determination. The Judicial Council of California shall develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for



reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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